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SUBJECT: ELECTIONS FOR NEW UN APPEALS AND DISPUTE TRIBUNALS

¶1. This is an action request. See paragraph 6.

¶2. Summary: On December 24, the General Assembly adopted a resolution (A/RES/63/253) establishing a new administration of justice system for the United Nations, adopting statutes that govern a new UN Dispute Tribunal (UNDT) and a new UN Appeals Tribunal (UNAT). Operation of these tribunals will commence in July 2009. As usual, there is a prohibition of more than one judge from any one country. The newly established Internal Justice Council (IJC) created to vet candidates for these positions reviewed candidates from around the world for election of judges to the two new tribunals and reported their recommendations to the UN General Assembly (A/63/489) in October 2008. The General Assembly will elect seven judges for the UNAT, and three full time judges and two half time judges for the UNDT. These elections could take place as early as the end of January 2009. Given that there are two American candidates for the UNAT, USUN seeks guidance on how to proceed. End Summary

¶3. The IJC received 237 applications from 55 countries. For the UNDT, the IJC recommended two candidates each for the full time positions in Geneva, Nairobi and New York and four candidates for the two half-time positions. For the UNAT, the IJC recommended fifteen candidates for the seven positions. The IJC recommended two American candidates for the UNAT - State Judge Marilyn Kaman of Minnesota and State Judge Mark Painter of Ohio. There were no Americans recommended for the UNDT. Of the two American candidates for the UNAT, Judge Kaman has reached out repeatedly to both the Department and the Mission for support.

¶4. The IJC's recommendation of two candidates for the same position came as an unwelcome surprise in view of the accepted goal of achieving wide geographical diversity and the prohibition in the statutes of the UNDT and UNAT against more than one judge being elected from any one country. Moreover, the nomination of two American judges for a UNAT position undermines the prospects of either American being elected if Member States split their voting between the two. The U.S. objected to the practice of the IJC recommending two individuals of the same nationality for a judgeship as a matter of principle and succeeded in having it banned in the future. However, this initial election presents the U.S. with a dilemma on how to proceed. USUN's hope is that one of the Americans would be elected to the UNAT. Three options for the Department's consideration are: 1) express support (and campaign) for both American candidates and hope that one secures a seat on the UNAT; 2) endorse one candidate over the other and campaign for this candidate; or 3) seek withdrawal of one candidate in order to have only one U.S. candidate. If the Department decides to pursue option 2 or 3, the U.S. could undertake to support the candidate the U.S. does not support for the UNAT position for another judgeship with the Tribunals in the future. We recommend that the Department consider pursuing option 3.

¶5. The United Kingdom has approached the Department and USUN with a proposal that Member States not campaign for their nationals for these tribunal elections, but only if all Member States with nationals as candidates so agree. The

intent is to preserve judicial independence and to focus solely on merit. USUN does not agree with this approach. The IJC process is intended to ensure that the candidates are of the highest quality and have the appropriate skills and experience. Moreover, there are term limits for those elected - one non renewable term of seven years. These parameters provide fundamental protection against potential political interference in the elections process. Once selected as a candidate by the IJC, it is both principled and expected that Member States would support their own candidates.

¶6. USUN requests guidance from the Department on how to proceed. USUN also asks to be kept informed on how the Department responds to the UK's request not to campaign for the respective national candidates.
Khalilzad